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ATTORNEY DOCKET NO. CONFIRMATION NO. APPLICATION NO. FILING DATE FIRST NAMED INVENTOR 10/03/2000 48317USA5L.031 7360 09/677,637 Daniel A. Japuntich **EXAMINER** 32692 06/15/2004 7590 LEWIS, AARON J **3M INNOVATIVE PROPERTIES COMPANY** PO BOX 33427 ART UNIT PAPER NUMBER ST. PAUL, MN 55133-3427 3743 DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/677,637	JAPUNTICH ET AL.
	Examiner	Art Unit
	AARON J. LEWIS	3743
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).		
Status		
1) Responsive to communication(s) filed on 09/03	<u>3/2002 (AMENDMENT)</u> .	
2a) ☐ This action is <b>FINAL</b> . 2b) ☑ This action is non-final.		
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is		
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4)⊠ Claim(s) <u>33-36,38-62 and 64-70</u> is/are pending in the application.		
4a) Of the above claim(s) is/are withdrawn from consideration.		
5) Claim(s) is/are allowed.		
6)⊠ Claim(s) <u>33-36,38-62 and 64-70</u> is/are rejected.		
7) Claim(s) is/are objected to.		
8) Claim(s) are subject to restriction and/or election requirement.		
Application Papers		
9) The specification is objected to by the Examine	r.	
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
Priority under 35 U.S.C. § 119		
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:		
1. Certified copies of the priority documents have been received.		
2. Certified copies of the priority documents have been received in Application No		
3. Copies of the certified copies of the priority documents have been received in this National Stage		
application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
Attachment(s)  1) Notice of References Cited (PTO-892)	4) 🔲 Interview Summary	/ (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail D	ate
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	5) Notice of Informal I	Patent Application (PTO-152)
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## **DETAILED ACTION**

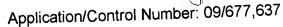
## Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 and to prevent possible harassment possible harassment possible harassment possible harassment possible harassment possible harassment possible h

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

doctrine of obviousness-type double patenting as being unpatentable over claims 34-38,40-74,78-81 of copending Application No. 08/240,877 in view of Braun ('362) and Warbasse ('706). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in each co-pending application are drawn to a filtering face mask adapted to fit over the nose and mouth of a wearer and having an exhalation valve which has a flap retaining stationary surface and a second free portion which lifts away from its seat during user exhalation. The difference between claim 33 of the instant application and claim 34 of copending application ('877) is a valve cover that is disposed over the valve seat, the valve cover comprising an opening that is disposed directly in the path of fluid flow when the free portion of the flexible flap is lifted from the seal surface during an exhalation; a fluid impermeable



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ceiling that increases in height in the direction of the flexible flap from the first end to the second end; and cross members that are disposed within the opening of the valve cover.

Warbasse teaches a valve cover (11) having a fluid impermeable ceiling that increases in height in the direction of the flexible flap from the first end to the second end for the purpose of protecting the valve flap (12), controlling the extent of movement of the valve flap, and controlling the direction of fluid flow exiting the mask via the valve.

It would have been obvious to modify the filtering face mask of claim 33 to provide a valve cover because it would have provided a means for protecting the valve flap, controlling the extent of movement of the valve flap and controlling the direction of fluid flow exiting the mask via the valve as taught by Warbasse.

Braun, in an exhalation valve for a filtering face mask, teach cross members (25) that are disposed within the opening of the valve cover for the purpose of protecting the valve against debris (col.4, lines 25-26).

It would have been obvious to further modify the filtering face mask of claim 33 as modified by Warbasse to include cross members within the opening of the valve cover because it would have provided a means for protecting the valve flap against debris as taught by Braun.

Claims 65,66,67,69 are equivalent in scope to claim 33 of the instant application and would have been obvious over claim 34 of copending application ('877) in view of Warbasse and Braun for the reasons set forth above with respect to claim 33.

This is a <u>provisional</u> obviousness-type double patenting rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AARON J. LEWIS Primary Examiner Art Unit 3743

Aaron J. Lewis June 13, 2004